

SERVED: March 31, 1994 .

NTSB Order No. EA-4118

**UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.**

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 10th day of March, 1994

---

DAVID R. HINSON,  
Administrator,  
Federal Aviation Administration,

Complainant,

Docket SE-12075

v.

SAMUEL R. GABOUR,

Respondent.

---

OPINION AND ORDER

Respondent, pro se, has appealed from the oral initial decision of Administrative Law Judge Joyce Capps, rendered at the conclusion of an evidentiary hearing on February 14, 1992.<sup>1</sup> By that decision, the law judge affirmed an order of the

---

<sup>1</sup>An excerpt from the hearing transcript containing the initial decision is attached.

Respondent filed an appeal brief to which the Administrator replied.

Administrator, which served as the complaint, charging respondent with violations of sections 91.123 (b) and 91.13 (a) of the Federal Aviation Regulations ("FAR," 14 C.F.R. Part 91) .<sup>2</sup> Because respondent had timely filed a report with the National Aeronautics and Space Administration (NASA) pursuant to the requirements of the Aviation Safety Reporting Program (ASRP) , and was a proper candidate for the program, no sanction was sought or imposed.<sup>3</sup>

It is not disputed that on November 15, 1990, respondent was pilot-in-command of a Beech Baron aircraft, N9028V, preparing to take off from the Manchester, New Hampshire, airport. Air Traffic Control (ATC), intending to convey the message that respondent was to commence an intersection departure, gave respondent, who was at the intersection of Taxiways Alpha and Echo , the following instruction:

---

<sup>2</sup>The pertinent regulations read as follows:  
 S 91.123 Compliance **with ATC clearances and instructions.**

(b) Except in an emergency, no person may operate an aircraft contrary to an ATC instruction in an area in which air traffic control is exercised.

**S 91.13 Careless or reckless operation.**

(a) Aircraft operations for the purpose of air navigation.  
 No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another.

<sup>3</sup>The ASRP allows those pilots who timely file an incident report with NASA and do not have a violation history to avoid any certificate suspension that would have resulted from that incident provided that, among other things, the violation was inadvertent . See FAA Advisory Circular, AC No. 00-46C, 9(c) (1) (Feb. 4, 1985).

November two eight victor Manchester Tower runway Three Five at Echo, a left turn on the runway, cleared for takeoff. Traffic's on a mile left base.<sup>4</sup>

The Administrator concedes that the controller used non-standard phraseology in this instruction.

Respondent taxied to the intersection of Echo and Runway 35. He then turned right onto the runway, planning to reach the displaced threshold, make a 180-degree turn, and take off. He asserts that his understanding of the instruction was that he should turn left onto taxiway Echo, proceed to the runway, and then take off from the displaced threshold (which required him to make a right turn from the intersection and taxi south, according to respondent, a distance of approximately 240 feet) . When the controller realized that respondent had made a right instead of a left turn, he immediately canceled the takeoff clearance, fearing that respondent would be in conflict with N66TH, a Beech Duchess BE-76 on the base leg of its approach. He then instructed N66TH to go around.<sup>5</sup>

Contending that his actions were the result of the controller's use of non-standard phraseology, respondent maintains that the controller should have used the proper language as delineated in the Controller's Manual, Exhibits R-1, R-2, R-3: namely, "Runway 35 intersection departure." This would

---

<sup>4</sup> Administrator's Exhibit 2.

<sup>5</sup> According to a statement from the pilot receiving flight instruction in the Duchess at the time of the incident, he received the go around instruction when he was between 500 to 1,000 feet AGL and either a mile base, or 1½ to 2 miles final. Exhibit R-4.

have alleviated respondent's mistaken impression that he was being instructed to turn left onto the taxiway in order to reach the runway. Due to his location at the intersection of Taxiways Alpha and Echo at the time 'he received the takeoff clearance, respondent asserts that he had to make a left turn to reach the runway.<sup>6</sup> Thus , he continues, the instruction "runway three five at echo a left turn on the runway. . . " was misleading.

We find that safety in air commerce or air transportation and the public interest require the affirmance of the section 91.13(a) charge only. We explain.

Board precedent reveals that an airman will not be held accountable for violations precipitated by erroneous or ambiguous instructions from ATC.<sup>7</sup> In the instant case, the evidence illustrated that a controller is required to issue instructions using the standard phrases published in the Controller's Manual. If further clarification is then necessary, the controller may, at his or her discretion, utilize any language to communicate the intended meaning to the pilot. Tr. at 29, 36-37, 74-75, 82. The omission, in this instance, of the phrase "intersection departure, cleared for takeoff" was critical, as it directly induced the consequent misunderstanding. After using the prescribed language to communicate his intention to initiate an

---

<sup>6</sup>It should be noted that due to an ongoing construction project, the runway could not be reached from Taxiway Alpha. Respondent knew that he could only reach the runway through its intersection with Taxiway Echo.

<sup>7</sup>Administrator v. Fromuth and Dworak, EA-3816 (1993); Administrator v. Smith, 3 NTSB 85 (1977) .

intersection takeoff, the controller would have been free to augment the instruction with "turn left on the runway. " The instruction he gave, however, standing alone, was so deficient in form that it cannot stand as the foundation for a section 91.123(b) violation.

On the other hand, an airman's actions must have ensued from a reasonable interpretation of the controller's instructions.<sup>8</sup> Like the law judge, we believe respondent's impression that he was to turn left onto the taxiway on his way to the runway was so unreasonable as to be implausible. Given this conclusion, we find that respondent did violate FAR section 91.13(a) . His actions were, like those of the controller, careless and compromised safety. To his takeoff clearance, containing non-standard terms, respondent replied with a simple "Okay."<sup>9</sup> If respondent had read back the instruction he thought he received, an opportunity to discover the confusion would have existed.<sup>10</sup>

---

'See Administrator v. Parsons and Hawk, NTSB Order No. EA-3986 (1993) (respondents' belief that an instruction that was, in fact, intended for another aircraft was actually intended for them was not reasonable) ; Administrator v. Borden 5 NTSB 2181, 2182-83 (1987), aff'd Borden v. Administrator, 849 F.2d 319 (8th Cir. 1988) (although controller should have used taxiway designators, this omission should not have reasonably misled respondent into believing he had clearance to cross runway) .

<sup>9</sup>Tr. at 47; Exhibit A-3. Although the transcript of the communication lists the response as "unintelligible, " Exhibit A-2, respondent did not contradict the controller's statement, either at the hearing or in his appeal brief.

<sup>10</sup>The Board has consistently encouraged pilot readback of takeoff clearance. See e.g., Administrator v. Friesen and Ashcraft, NTSB Order No. EA-3203 at 6 (1990), citing Administrator v. Hinkle and Foster, 5 NTSB 2423, 2426 (1987) .  
(continued. ..)

Instead, respondent proceeded to turn right on the runway when he knew that another aircraft would soon be landing.<sup>11</sup> In sum, respondent's interpretation of the clearance is unreasonable in the circumstances, his failure to read back was less than the situation required and, the right turn on the runway added the element of potential endangerment necessary to sustain a violation of FAR section 91.13(a) .

Finally, respondent claims that the law judge was rude, intimidating, and denied him his "day in court." We have examined the record and determined that while the law judge may have, at times, been abrupt with respondent, she in no way deprived him of a fair and impartial hearing. He had a full opportunity to be heard and was granted great leeway in his examination of witnesses. We find that no prejudice occurred.<sup>12</sup>

---

<sup>10</sup> (... continued)

Here, a readback might well have substituted the word "to" for the otherwise solecistic "on," if respondent actually believed he had been told to turn left to the runway. That would have been all a careful listener would have needed to discover the confusion.

<sup>11</sup>That no actual conflict developed between respondent's aircraft and the aircraft on approach does not forestall the finding that respondent acted carelessly so as to endanger the life or property of another. Potential endangerment is enough to support a 91.13 (a) violation. See Administrator v. Haines, 1 NTSB 769, 771 (1970), aff'd, 449 F. 2d 1073 (D.C. Cir. 1971) . The evidence revealed that if respondent had continued to take off, there would not have been the required separation between his aircraft and the Duchess.

<sup>12</sup>Respondent contends that it was unfair for the law judge to release one of respondents witnesses from his subpoena after the witness telephoned during the hearing, detailing the extenuating circumstances for his absence. To compensate for the witness's absence, the law judge allowed a personal statement written by  
(continued. ..)

**ACCORDINGLY, IT IS ORDERED THAT:**

1. Respondent's appeal, is granted, in part;
2. The Administrator's order and the initial decision are affirmed, in part; and
3. Sanction is waived pursuant to the provisions of the ASRP.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT and HALL, Members of the Board, concurred in the above opinion and order.

---

<sup>12</sup> (...continued)

this witness to be admitted into evidence. We find that respondent's case was not prejudiced by the absence of this witness, whose testimony, as revealed in the statement, would largely have been unrelated to the main issues of the case.